

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HEALTH

In the Matter of the License Application
FACT
of Rochester Ambulance Service, a Division
CONCLUSIONS AND
of Hiawatha Aviation of Rochester, Inc.,
d/b/a Rochester Aviation

FINDINGS OF

RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on March 12, 1992, in the Council Chambers of the Rochester City Hall, Rochester, Minnesota. The record in this matter closed on March 27, 1992, the date of receipt of the last post-hearing submission.

Donald C. Willeke, Attorney at Law, Willeke & Daniels, 201 Ridgewood Avenue, Minneapolis, Minnesota 55403-3508, appeared on behalf of the Applicant, Rochester Ambulance Service (hereinafter referred to as "Rochester Ambulance" or "the Applicant"). Harold A. Frederick, Attorney at Law, Fryberger, Buchanan, Smith & Frederick, 700 Lonsdale Building, 302 West Superior Street, Duluth, Minnesota 55802-1863, appeared on behalf of the Intervenor, Gold Cross Ambulance Service, Inc. (hereinafter referred to as "Gold Cross" or "the Intervenor").

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner of Health shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner of Health. Parties should contact Marlene E. Marschall, Commissioner of Health, Minnesota Department of Health, 717 Delaware Street Southeast, P.O. Box 9441, Minneapolis, Minnesota 55440-9441, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this proceeding is whether the Applicant's application for a new license to operate an advanced ambulance - specialized service should be granted under the standards set forth in Minn. Stat. 182.802, subd. 3(g) (1990).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background-And-Procedural History

1. Rochester Ambulance is a for-profit corporation which is owned by Hiawatha Aviation of Rochester, Inc., a Minnesota business corporation, doing

business as Rochester Aviation and Rochester Med-Air. Rochester Med-Air is a licensed advanced air ambulance service.

2. On or about December 11 , 1 991 , Rochester Ambulance filed an application with the Minnesota Department of Health to operate an advanced ambulance - specialized service in the Rochester area.

3. On or about January 23, 1992, the Commissioner of Health issued a Notice of Completed Application and Notice of and Order for Hearing setting a hearing in this matter for February 28, 1992. A corrected notice of hearing was later issued at the request of the Applicant's attorney which changed the date of the hearing to March 12, 1992.

4. The corrected notice of hearing was published in 1 6 State Register 1827 (Feb. 3, 1992), and in the Post-Bulletin (a Rochester, Minnesota newspaper) on February 5, 1992, and February 12, 1992. Notice of the hearing was also served upon the Olmsted County Board of County Commissioners; the Olmsted County Community Health Board; the Olmsted County Health Department; the Regional Coordinator of the Southeastern Minnesota EMS Joint Powers Board; Gold Cross Ambulance Service, Inc., Eyota Volunteer Ambulance Service, Mayo Air Medical Transport Service, and Newman Air Charter, Inc.; and the Mayors of the Cities of Rochester, Byron, Chatfield, Dover, Eyota, Oronoco, and Stewartville.

5. On February 24, 1992, Gold Cross filed a petition to intervene as a party. Rochester Ambulance filed a memorandum in opposition to the petition on March 2, 1992. On March 3, 1992, the Administrative Law Judge granted the petition of Gold Cross to intervene as a party in this matter.

Description of the Proposed Servicee

6. Rochester Ambulance seeks a new license to operate an advanced ambulance service - specialized to provide non-emergency service in the Rochester area. As clarified at the hearing, the Applicant wishes to transport patients from the Rochester Municipal Airport to the three Rochester hospitals (St. Mary's Hospital, Methodist Hospital, and Community Hospital) or local nursing homes, or transport patients from these hospitals and nursing homes back to the airport. The Applicant contemplates making transfers to nursing homes if, for example, the patient is placed in a nursing home while awaiting the availability of an organ for an organ transplant operation.

7. Although the primary service area in which Rochester Ambulance seeks to operate is Olmsted County, it will not provide any first responder or emergency services to the public. It will merely provide previously-scheduled ground ambulance transportation services to and from air ambulances using the Rochester Municipal Airport and the above-mentioned health care facilities in Olmsted County.

B. Based on prior business and telephone requests, the Applicant estimates that, if the application is granted, it will make 150 specialized advanced ambulance runs and 50 specialized basic ambulance runs during the next year.

9. Austin Ambulance Service, a basic ambulance service located in Austin, Minnesota, will provide back-up service for the Applicant. Austin is approximately 20-30 miles from Rochester.

10. Back-up service would not often be required with respect to the Applicant's proposed service. If it appeared that two patients might arrive via air ambulance at the same time, the Applicant would have the option of making a scheduling change in the flights to accommodate the single ambulance to be operated by Rochester Ambulance. The Applicant would also have the option to decline to provide the requested service.

Relationship to Community Health Plans

11. The Olmsted County Board of County Commissioners has determined that it will discharge its emergency medical care responsibilities by active participation in the Southeast Minnesota Emergency Medical Services Board. See 1992 Olmsted County Community Health Services Plan at ii (Exhibit 29). The Plan notes that "[e]mergency medical services function effectively in SE Minnesota due to a well-developed system." Id. at 38.

12. The 1992 Olmsted County Community Health Services Plan does not contain any discussion of specialized advanced or basic ambulance service.

Comments of Governing Bodies and Public Officials

13. At its October 8, 1991, meeting, the Olmsted County Board of County Commissioners reviewed the Applicant's proposal to expand current air ambulance service to provide scheduled ground ambulance service. The Board made no comment regarding the application. (Oct. 14, 1991, letter to the Department of Health from Richard G. Devlin, County Administrator, appended to the Applicant's application.)

14. No comments have been received from any other governing bodies or public officials in Rochester or Olmsted County.

15. The population to be served by the Applicant is almost without exception located outside Olmsted County and outside the state of Minnesota. The only occasion on which the Applicant might serve an Olmsted County resident is if the resident became ill while out of the area and returned to Rochester via air ambulance for treatment.

Deleterious Effects from Duplication of Ambulance Services

16. Gold Cross is currently licensed to provide advanced ambulance service in a primary service area ("PSA") which roughly encompasses Olmsted County. Gold Cross does not service the eastern section of the County on a 911 basis, pursuant to a system devised by existing providers in order to avoid overlap in handling 911 calls. Exhibit 26 represents an approximation of the geographical area served by Gold Cross. Gold Cross provides both specialized (commonly referred to as "scheduled") and emergency ambulance services, and is the only current provider of ground ambulance service in the Rochester area.

17. The PSA which Rochester Ambulance seeks to serve overlaps that served by Gold Cross. The services which Rochester Ambulance proposes to provide, however, duplicate only a small portion of the services currently provided by Gold Cross.

18. Substantial expense is required to ensure that Gold Cross ambulances are available at all times of the day for medical emergencies. Exhibit 20 illustrates the on-duty and on-call staffing schedule that Gold Cross employs to handle emergency calls.

19. There is little ability to predict demand for emergency services, and the cost of having resources available is very high. One method for ambulance services to reduce these costs is to build a scheduled, non-emergency transfer business. Scheduled runs also help stabilize rates charged by ambulance services because there is a lesser risk of non-collection of ambulance fees from recipients of such services as compared to recipients of emergency services.

20. The income received by Gold Cross from scheduled runs, including its airport runs, has helped to reduce the costs associated with ensuring the availability of ambulances and crews for emergencies.

21. During 1991, the average amount charged by Gold Cross per airport patient was \$264.22. The Applicant's air ambulance affiliate was involved in 33 of the 629 ambulance runs by Gold Cross to or from Rochester Municipal Airport during 1991. (Exhibit 22.)

22. If the application is granted and Gold Cross loses 33 airport runs to Rochester Ambulance during the next year, Gold Cross projects that it would suffer \$8,719.26 in lost revenues. If that amount of lost revenues were to be recouped by increasing the fees charged all of its ambulance patients, Gold Cross estimates that it would have to increase its fees by \$1.22. If that amount were recouped by increasing the fees charged emergency patients only, such fees would increase by \$3.33. (Exhibit 25.)

23. The Applicant has estimated that, if the application is granted, it will make 200 ambulance runs during the next year. If Gold Cross loses 200 airport runs to Rochester Ambulance during the next year, Gold Cross projects that it would suffer \$52,844.00 in lost revenues. In order to recoup this amount, Gold Cross would have to increase all fees by \$7.57 or emergency fees by \$21.57. (Exhibit 25.)

24. The loss of 33 scheduled runs would amount to less than .5 percent of the 7,183 total runs handled by Gold Cross during 1991. The loss of 200 scheduled runs would amount to approximately 2.8 percent of the 7,183 total runs handled by Gold Cross.

25. Gold Cross has experienced fluctuations in total airport scheduled runs from year to year in the past. For example, it made 788 airport runs during 1987, and only 610 in 1988.

26. Insufficient evidence was provided on which to base a finding that

Gold Cross will be required to seek tax subsidies, reduce its services, or increase its fees if the application of Rochester Ambulance is granted.

Estimated Effect on the Public Health

27. Because the Applicant does not seek licensure as an ambulance service serving the entire population of Rochester or Olmsted County, the application will have no material effect on the general level of the public

health in those locations. The Applicant proposes to provide service almost entirely to persons who are not local residents.

28. The Applicant estimates that its maximum and average time for the scheduled services it seeks to provide will be 0-15 minutes. The maximum distance it will travel will be 9.7 miles (the distance from Rochester Municipal Airport to St. Mary's Hospital). Because the Applicant's ambulance generally will be standing by at the airport to transport patients arriving by air, there will be greater assurance that an ambulance will be available for in-coming patients.

29. The Mayo Clinic has agreed to provide medical control for the care of patients being transported by the Applicant's fixed wing and ground ambulances by means of immediate two-way voice communications 24 hours a day, seven days a week. (Sept. 27, 1991, letter from Julie Haas, Administrative Assistant, Emergency Services, St. Mary's Hospital, to Hiawatha Aviation of Rochester, Inc., appended to application.)

30. The Applicant plans to use exclusively registered nurses while transporting patients during the provision of basic and advanced ambulance service, rather than paramedics or emergency medical technicians ("EMTs"). Gold Cross ambulances are staffed by EMTs who are certified and recertified every two years pursuant to standards established by the National Registry of EMTs.

31. Mike Nordmann was erroneously included in the roster of personnel set forth in the Applicant's application. He is now a full-time employee of Gold Cross and no longer works for any affiliate of Hiawatha Aviation.

32. The training of registered nurses does not necessarily encompass the training a paramedic receives regarding emergency conditions.

33. All of the registered nurses identified in the roster of personnel set forth in the Applicant's application have had emergency nursing, flight nursing, and/or ICU experience.

34. It is not uncommon for air ambulance staff nurses or paramedics to accompany patients being transported by a Gold Cross ambulance to a Rochester hospital. Gold Cross does not impose a charge for this service unless the ambulance staff requests that the ambulance return them to the airport.

35. Rochester Ambulance estimates that it will charge \$200 for basic ambulance service and \$250 for advanced ambulance service. It will not charge any additional fee to transport air ambulance staff nurses or paramedics back to the airport after the patient is delivered to a health care facility. Gold Cross currently charges \$265 for basic service and \$320 for advanced service. It also charges an additional \$55 to return an air ambulance nurse or paramedic who is not an employee of Gold Cross to the airport.

36. Some individuals transported by Rochester Med-Air have complained in the past that the rates charged by Gold Cross for ground transportation are

too high. On more than 50 occasions in 1991, patients who traveled to Rochester via Rochester Med-Air chose to be transported to hospitals via taxicabs operated by an affiliate of the Applicant or via special vans operated by the hospitals or an affiliate of the Applicant.

37 If the application is granted, the Applicant would provide ground ambulance service to air ambulance patients at a lesser charge than that imposed by the sole current provider.

38. The Applicant has a contract to purchase a 1981 Ford E-350 1.58 W.B. Type III Ambulance upon approval of its application. The Applicant estimates that \$32,335 in annual expenses and \$47,500 in total revenue and cash contributions will be associated with the proposed ground ambulance service during its first year. The Applicant's estimated operating costs for years one through five show total income constant at \$47,500, and expenses ranging from \$30,694 to \$32,335. The Applicant projects that 45 percent of its revenue will emanate from third party payments, 50 percent from patient charges, and 5 percent from a subsidy by the Mayo Social Services Department.

39. Because the affiliated companies will be providing ambulance service to patients both on the ground and in the air and the same health care professionals will accompany patients during both phases of their journey, the Applicant will be able to achieve some efficiencies in administrative overhead.

40. As mentioned above, Rochester Ambulance will be able to charge fees that are significantly less than the current provider. The public health will be benefitted by virtue of such lower rates.

41. The Applicant's proposed service may also encourage greater continuity in the care provided air ambulance patients because the Applicant's intention to return air ambulance staff to the airport free of charge may result in greater numbers of air ambulance staff accompanying patients in the ground ambulance.

42. Insufficient evidence was provided on which to base a finding that the fees charged by Gold Cross will increase or the services provided by Gold Cross will suffer if the application is granted.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 144.802 (1990). The Notice of Hearing was proper in all respects and all procedural and substantive requirements of law and rule have been fulfilled.

2. Minn. Stat. 144.802, subd. 3(g) (1990), provides:

The administrative law judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receiving notice of the application. In making the recommendations, the Administrative Law Judge shall consider and make written comments as to whether the proposed service . . . is needed, based on consideration of the following factors:

(1) the relationship of the proposed service . . . to the current community health plan approved by the commissioner under section 145.918;

(2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;

(4) the estimated effect of the proposed service . . . on the public health;

(5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service

The administrative law judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted

3. The burden of proof to show that the license should be granted is on the Applicant. North Memorial Medical Center v. Minnesota Department of Health, 423 N.W.2d 737, 739 (Minn. App. 1988), citing In re City of White Bear Lake, 311 Minn. 146, 150, 247 N.W.2d 901, 904 (1976).

4. After due consideration of all of the factors enumerated in the above-quoted statutory provision and for the reasons set forth in the Memorandum below, the Administrative Law Judge concludes that the Applicant has met the statutory criteria and that its application should be granted.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Health grant the application of Rochester Ambulance Service to provide advanced ambulance - specialized service within the proposed primary service area.

Dated this 23rd day of April, 1992.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Taped, not transcribed (tapes no. 11,422, 11,421, and 11,433)

MEMORANDUM

Applicant Rochester Ambulance has applied for a license to provide specialized advanced ambulance service in Olmsted County. A company affiliated with Rochester Ambulance already operates an air ambulance service based at the Rochester Airport. The license of Rochester Ambulance would be limited to the provision of non-emergency ambulance service arranged in advance (commonly referred to as "scheduled" service) involving ground transportation to and from air ambulances utilizing the Rochester Airport and Rochester hospitals or area nursing homes. Intervenor Gold Cross Ambulance Service, the sole current provider of ground ambulance transportation in the Rochester area, has vigorously contested the licensure of the Applicant. Gold Cross contends, Inter Ilia, that the application should be denied because the Applicant has not included adequate indications of the training of the registered nurses whom the Applicant would employ, improperly identifies a basic ambulance service located in Austin, Minnesota, as a back-up service, fails to include as part of its application an adequate mutual aid agreement with the Austin service, will not provide a "higher level of service" than Gold Cross, and will engage in deleterious competition with Gold Cross. These contentions will be discussed below in conjunction with the statutory factors required to be considered in this case.

The first factor to be considered is "the relationship of the proposed service . . . to the current community health plan" Minn. Stat.

144.802, subd. 3(g)(1) (1990). The Olmsted County Community Health Services Plan does not address the provision of non-emergency, "scheduled" ambulance service. The proposed service thus is not inconsistent with the relevant community health plan, and this factor has no impact in the decision of this matter.

The second factor which must be addressed is "the recommendations or comments of the governing bodies of the counties and municipalities" within the proposed PSA. Minn. Stat. 144.802, subd. 3(g)(2) (1990). The Olmsted County Board of County Commissioners expressly declined to comment upon the application, and no other governing bodies or public officials expressed support or urged rejection of the application. The lack of endorsement by any

governing bodies generally weighs against the issuance of a license. See Commissioner's Order in In the Matter of the License Application of County Emergency Medical Services Fertile. Minnesota, No. 69-0900-4125-2 (April 16, 1990), at 2. In this case, the negative effect is mitigated somewhat since it is likely that the failure to comment merely stems from the fact that the service to be provided by Rochester Ambulance has virtually no impact upon residents of Rochester or Olmsted County.

The third factor which must be considered is "the deleterious effect on the public health from duplication, if any, of . . . services that would result from granting the license." Minn. Stat. 144.802, subd. 3(g)(3) (1990). Despite the arguments of the Applicant to the contrary, the Administrative Law Judge has concluded that granting the application will result in some duplication of services. The Judge is not persuaded by the Applicant's attempts to argue that its service would differ from that offered by Gold Cross. The Applicant did not establish that the registered nurses it

would employ have qualifications superior to the EMTs and paramedics employed by Gold Cross.I/ Moreover, because it is clear that Gold Cross permits air ambulance medical staff to accompany patients in its ground ambulances and that continuity of care thus is already an option, the Applicant also failed to demonstrate that it would be able to provide a higher level of continuity of care than Gold Cross. The record in this case compels the conclusion that issuance of the requested license will result in some duplication of services in the PSA because both the Applicant and Gold Cross would be licensed to provide advanced ambulance service on a scheduled basis in order to transport air ambulance patients arriving at Rochester Airport back and forth from area hospitals and nursing homes.

Minn. Stat. 144.802 has been construed by the Minnesota Supreme Court to:

manifest a legislative intention to protect the public welfare against deleterious competition in the ambulance services field. The provision embodies a legislative determination that the ambulance service business is one in which the public welfare is not promoted by free enterprise. Ambulance service is essential to a community. It is also a service for which demand is in-elastic and expenses largely fixed. Where the demand is insufficient to support additional services, either quality is sacrificed or rates and public subsidies increased, but in either event, the taxpayer-consumer suffers.

Twin Ports Convalescent Inc. v. Minnesota State Board of Health 257 N.W.2d 343, 348 (Minn. 1977). In deciding whether the level of duplication involved is permissible, however, the "determining factor is whether the duplication will result in an adverse impact on the health care provided to the community" rather than "the impact of adverse competition on small providers." Commissioner's Order in In re License Application of North Ambulance Hennepin County EMS and HealthOne, LST-88-6-MDH (Nov. 19, 1988).

The extent of duplication in the present case will be limited to the provision of scheduled service between the Rochester Airport and Rochester area hospitals and nursing homes. The granting of the application will have some impact upon the number of runs made by Gold Cross. Although the exact

number of lost runs is difficult to predict, it appears, using 1991 figures, that it will range from 33 to 200 runs per year. The loss of 33 runs would amount to less than .5 percent of the 7,183 total runs handled by Gold Cross during 1991 and would result in a reduction of approximately \$8,700 in run revenues. The loss of 200 runs would amount to less than 2.8 percent of its total runs during 1991 and would result in a reduction of approximately \$52,800 in run revenues.

Despite the Intervenor's contentions, however, it has also not been demonstrated that the training of the registered nurses identified on the personnel roster supplied by the Applicant is in some fashion inadequate.

The arguments of Gold Cross in opposition to the application focused only on the prospect that Gold Cross would have to make up for the lost revenues by seeking local tax subsidies, cutting back services, or imposing corresponding increases in the fees charged users of ambulance services. As emphasized by the Applicant, Gold Cross did not provide any evidence regarding its present or future levels of profitability or any evidence demonstrating that its total financial situation would be adversely affected by the granting of the application. The arguments made by Gold Cross regarding the deleterious effects that the granting of the application will have on the public health are not persuasive because they presuppose, without supporting evidence, that it will not be possible for Gold Cross to make up for the lost revenues in whole or in part by reducing profit levels, imposing wage freezes, deferring capital expenditures for equipment, or reducing expenses. Gold Cross admittedly has employed the latter three approaches, along with an increase in user fees, to counteract fluctuations in demand in the past. In any event, the amounts of lost revenues involved do not appear to be sufficiently significant to cause any decrease in emergency services provided by Gold Cross in Olmsted County and would, therefore, not have an adverse impact upon the public health.

The Applicant proposes to expand into an area where there is only one ambulance service offering scheduled and unscheduled services. This case is, however, distinguishable from *Twin Ports and North-Memorial-Medical Center v. Minnesota Department of Health*, 423 N.W.2d 737 (Minn. App. 1988), because (1) the Applicant demonstrated that air ambulance patients are currently foregoing the use of a ground ambulance due to their perception that the fees charged by Gold Cross are too high,^{2/} and (2) the area of the PSA in which the duplication will occur is the more heavily populated (and traveled) Rochester area which can possibly benefit from the increased competition rather than the more sparsely-populated portion of Olmsted County. The Judge

2/ There is no support in the record for the Intervenor's assertions that air ambulance patients have been steered to taxicabs or the van service operated by the Applicant's affiliated company. Joseph Wroblewski, Director of Operations for Hiawatha Aviation, testified that, when he has presented ground transportation options to air ambulance patients, there has been "lots of resistance" to using Gold Cross because of its high price, and patients have chosen to use cabs or vans at times even though he believed they needed a higher level of care. The contentions of the Intervenor that the charges of the Applicant for ground transportation will be presented in such a way that patients of air ambulances operated by the Applicant's affiliate will be unable to separate out such charges or compare them to Gold Cross charges and that the Applicant proposes to engage in "predatory" pricing practices and will minimize its prices by "reduction of costs through deferral of training [or] equipment upgrades" are similarly unsupported. Moreover, even assuming arguendo that the Applicant will quote a total package price to its air

ambulance passengers for air and ground transportation, passengers using other

air ambulances flying into Rochester will be presented with a meaningful choice regarding which ground service to use.

thus concludes that the public health will not suffer as a result of any duplication of ambulance services.^{3/}

The fourth factor which must be considered is "the estimated effect of the proposed service . . . on the public health." Minn. Stat. 144.802, subd. 3(g)(4) (1990). The provision of lower cost services with respect to a limited portion of the current operations of Gold Cross will provide a beneficial impact on health care in Olmsted County. The evidence justifies an inference that the demand for scheduled service from the airport to Rochester health care facilities will increase if a less expensive alternative is available because patients in need of greater care during their transfer to hospitals and nursing homes will be more likely to select ambulance transportation. The record also suggests that flight nursing staff will be more likely to accompany patients in the ground ambulance if the ambulance does not charge a fee for returning them to the airport, and that patients thus will benefit from greater continuity in their care. The proposed service will also benefit the public health by providing greater assurance that an ambulance will be available at the airport for in-coming patients because the Applicant's ambulance will be garaged at the airport. Therefore, the proposed service will have a positive effect on the public health.

The last factor which must be addressed is "whether any benefit accruing to the public health would outweigh the costs associated with the proposed service." Minn. Stat. 144.802, subd. 3(g)(5) (1990). The "costs" to which the statute refers are the costs of a proposed service which will be passed on to the consuming public. *Life Star Ambulance__Systems__Inc. _v Ashton*, 363 N.W.2d 895 (Minn. App. 1985). The Applicant will incur costs associated with the start-up of its ground ambulance service, such as the cost of purchasing

3/ Two additional issues raised by the Intervenor in this regard deserve attention. First, Gold Cross expressed concern that the Applicant's intention to advertise its service in the Yellow Pages might result in confusion of the public concerning the type of services provided by the Applicant and circumvention of the 911 system for handling medical emergencies. The possibility of such confusion could be reduced if the Applicant's advertisement makes clear the scheduled, non-emergency nature of the services it provides and underscores that 911 should be called in the event of an emergency. Second, Gold Cross found it troublesome that the Applicant had designated an Austin, Minnesota, basic ambulance service as a back-up, had not obtained a formal mutual aid agreement from this service, and apparently intends to use

Gold Cross as an "uncompensated back-up." Because the Applicant, by the very nature of the license it seeks, is in a position to schedule its runs well in advance and may reschedule flights in the event a conflict appears, it is highly unlikely that a back-up service will be necessary. If basic services were requested and a conflict arose, it appears likely that the Austin ambulance service would have ample time to drive to the Rochester airport or health care facilities. If advanced services are requested and the Applicant is unable to perform, the Applicant would be able to decline the business and refer the caller to Gold Cross. Gold Cross is correct in asserting that it will serve as a de facto back-up service in such circumstances. If the application is granted as recommended, perhaps the Applicant and Gold Cross could enter into a formal mutual aid agreement in this regard.

an ambulance, but it will achieve certain efficiencies in its operations by virtue of its air ambulance business and, rather than passing on increased costs to the public, will be able to provide its service to consumers at a cost significantly less than the current provider. Although, as discussed above, Gold Cross will suffer some reduction in revenues if the application is granted, the extent of such a reduction is likely to represent less than 2.8 percent of its total revenues and there is no persuasive evidence that Gold Cross will have to make up for this loss by seeking tax subsidies, reducing its EMS services, or raising its rates. Any increased cost to the public due to losses experienced by Gold Cross is only speculative and will not be the basis for a negative recommendation in this matter. The Judge thus concludes that the costs associated with the lost revenues incurred by Gold Cross are outweighed by the benefits that will accrue to the public health through the provision of the Applicant's proposed service.

Because the Applicant has borne its burden of demonstrating that the proposed service is needed, the Administrative Law Judge has recommended that the application be granted.

B.L.N.